IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE ELEVENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION No. 4236 of 2005

Between:

M. Raghavan, S/o. C.A. Muthukrishnan,
R/o. 3-7-62/253, Southend Part, Munsoorabad Vill,
Saroornagar Mandal, R.R.District.

..... PETITIONER

AND

Director/Commissioner, Women Development and Child Welfare,
Govt of A.P., Yousoufguda, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue a writ, order or direction more particularly in the nature of Writ of Mandamus declaring the action of respondents in permitting the inter country adoption of children at Sishuvihar particularly without considering the claims of the Indian couple like that of petitioner as unconstitutional and consequently direct the respondents to give this boy Rupesh for adoption to the petitioners and pass such order or other orders.

Counsel for the Petitioner: MR.K.S.MURTHY

Counsel for the Respondent: GP FOR WOMEN DEV. & CHILD WELFARE

The Court at the admission stage made the following:

ORDER:

This writ petition is filed to declare the action of the respondent in permitting the inter country adoption of children at Sishuvihar particularly the boy Rupesh without considering the claims of the Indian couples like that of the petitioner, as unconstitutional, and for consequential direction to the respondent to give the boy Rupesh for adoption to the petitioner.

The grievance of the writ petitioner is that the respondent is not taking any steps to see that orphan children are not given for inter country adoption ignoring the pending claims of the Indian parents like the petitioner. The specific case of the petitioner is that he has been visiting the Sisuvihar for the last 1-½ years and he was told that one
5-year child, called Rupesh, is to be taken for adoption and his case was considered favourably. When twins were offered he could not take them due to the fact that two children of same sex cannot be taken for adoption under Hindu law. When he went to the Sishuvihar in the last week of January, 2005, he was informed that the boy Rupesh is being given to one foreign national for inter country adoption in violation of article 14 and 21 of the Constitution of India. Hence the present writ petition.

The respondent filed counter affidavit stating that as per laws of Spain, the age difference between the child and prospective adoptive mother should not exceed 40 years. Date of birth of the prospective mother is 13.05.1957. The date of birth of Master Rupesh is 10.06.1999. The difference of age between adopted and adoptee is 42 years. If the child is placed for adoption to Ms.Cristina Ferrer Lopez, D/o.Mr.Linceng Ferres Torrodelias, resident of Mercaves 121108003 Barcelona,

Spain, the adoption cannot be legalized in Spain. Therefore the future of Master Rupesh is a big question in that country, if his adoption is not legalized, as the age difference is not satisfied their law in their country. It is also admitted by the respondent that the Voluntary Coordinating Agency (for short "VCA") has violated the guidelines in 4.5 of Central Adoption Resources Agency (for short "CARA").

Heard the learned the counsel for the petitioner and the learned Government Pleader for Women Development and Child Welfare.

The specific plea of the petitioner is that he visited Sisuvihar and he was told that one boy Master Rupesh, aged about 5 years will be given for adoption, but no action has been taken. When the petitioner went to Sisuvihar in the last week of January, 2005, he was informed that the boy Rupesh is being given to one foreign national for inter country adoption. Even according to the respondent, if the said boy given for adoption to foreign national, the adoption cannot be legalized in Spain in view of the fact that the difference of age between adopted and adoptee is more than 40 years. So the action of the Sisuvihar is contrary to the laws governing adoption that may be given to Spanish national.

The guidelines framed in 4.5 of CARA are thus:

> "When a recognized Indian agency receives a child its first responsibility is to trace the biological parents and restore the child to them failing which as far as possible to place the child in adoption with Indian families. It would be desirable that an Indian recognized placement agency should place annually more than 50 per cent of the total number of children given in adoption with Indian families. However, the handicapped children, children above 6 years of age and siblings will be excluded from this calculation. The placement agencies are required to adhere the following order of priority while considering the adoption of Indian children:
>
> 1. Indian families in India.
> 2. Indian families abroad.
> 3. One parent of Indian origin abroad.
> 4. Totally foreign.
>
> Every recognized placement agency shall also give full details of the child to the prospective adoptive parents except the names and addresses of the biological parents, where known to the agency. It is only when all efforts to place the child within the country fail then the child would be cleared for inter-country adoption. These efforts should include contracting the VCA within the area of operation. A clearance certificate should be taken from VCA in this regard. Such clearance certificate shall be given by VCA. If within 60 days from the date the application to VCA, VCA is unable to send suitable Indian parents who are willing to take the child in adoption, intimation of making of the application to VCA shall be given to the Central Adoption Resource Agency forthwith. The Central Adoption Resource Agency will prepare a uniform proforma for clearance certificate to be issued by all voluntary coordinating agencies."

So the above guidelines clearly contemplate that preference shall be given to the Indian families for giving adoption. Therefore, the respondent shall take necessary action in giving adoption of the boy Rupesh to the petitioner.

The Writ Petition is, accordingly, allowed. No order as to costs.

Dated: 11.03.2005

Dsr

Note:

Issue CC by 15.03.2005

B/o

Dsr

ASSISTANT REGISTRAR

To:

1. The Director/Commissioner,

Women Development and Child Welfare,

Government of Andhra Pradesh, Yousoufguda,

Hyderabad

2. Two CCs to the Government Pleader for

Women Development and Child Welfare,

High Court Buildings, Hyderabad (OUT)

3. Two CD copies

*Form-NIC-OGS/WP{**JGK**}*